

It is clear therefore that a non-Christian marriage is not dissolved by the mere fact of the conversion of one or both the parties to Christianity. That being so, and the petitioner being a Christian at the time of presenting his petition, and it being found that the respondent has committed adultery, we think Act IV of 1869 applies. We accordingly confirm the decree made by the District Judge. (1)

A. A. C.

Decree confirmed.

APPELLATE CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Ameer Ali.

UGRAH LALL (JUDGMENT-DEBTOR) *v.* RADHA PERSHAD SINGH
(DECREE-HOLDER) AND OTHERS (AUCTION PURCHASERS).*

1891
February 4.

Bengal Tenancy Act (VIII of 1835), s. 174—Amount payable incorrectly calculated by an officer of the Court.

The judgment-debtor within 30 days from the date of sale deposited in Court, under section 174 of the Bengal Tenancy Act, the amount which had been calculated in the office of the Moonsiff as the amount payable under the section. Subsequently on its being discovered that the amount was short by a small sum, the calculation being incorrect, the Moonsiff held that the provisions of the section had not been complied with, and passed an order confirming the sale.

Held, that when the amount payable by the judgment-debtor under section 174 has been calculated and settled by an officer of the Court, and when that amount has been paid into Court, an order setting aside the sale must be made by the Court as a matter of right. The order of the Moonsiff confirming the sale was therefore held to be without jurisdiction and was set aside.

In this case the judgment-debtor obtained a rule and also appealed against an order of the District Judge upholding an order of the Moonsiff confirming an execution sale, and claimed

(1) See the case of *Zuburdust Khan v. His Wife*, 2 N. W., 370 RER.

* Appeal from Order No. 179 of 1890 and Rule No. 1745 of 1890, against the order of J. G. Charles, Esq., Judge of Shahabad, dated the 31st of May 1890, affirming the order of Baboo Pramatha Nath Chatterji, Moonsiff of Buzar, dated the 22nd of February 1890.

1891. to have the sale set aside under the provisions of section 174 of
 UGRAH LALL the Bengal Tenancy Act (VIII of 1885) under the following
 circumstances :—

v.
 RADHA
 PERSHAD
 SINGH.

On the 3rd August 1887, the Maharajah of Dumraon obtained a decree for arrears of rent against the judgment-debtor, and applied for execution of the decree with costs, amounting to Rs. 795-13, on the 15th July 1889. A sale proclamation was issued on the 6th August 1889, and Rs. 694-6 was mentioned as the decretal amount for which the property of the judgment-debtor was advertised to be sold. On the 30th October 1889 the property was sold for Rs. 1,035 to the opposite party, and on the 25th November, within the 30 days prescribed by section 174 of the Tenancy Act, the judgment-debtor applied under that section to have the sale set aside, offering to pay whatever amount might be found due on an account being taken. An order was made on the following day to the effect that "the judgment-debtor may deposit the amount if he so likes," and a *chalan* for Rs. 792-11-6 was accordingly prepared and signed by the sheristadar of the Moonsiff, in which Rs. 51-12 was mentioned as "damages" and Rs. 740-15-6 as "original decree." The officer in charge of the Treasury was directed to receive and credit the above sum before 3 P.M. on the 28th November 1889, and the same was duly tendered and received.

On the 24th January 1890, the auction-purchasers applied to have the sale confirmed on the ground that the whole amount had not been deposited, and on the 15th February the Court ordered another account to be prepared, and fixed the 22nd February for the hearing, ordering notice to issue to the parties. On that date the judgment-debtor put in a petition stating that he had deposited Rs. 792-11-6 according to the *chalan* made over to him by the sheristadar, and offered to pay the sum of Rs. 5-3, which, on the further account being taken, appeared to be due over and above the amount which had formerly been deposited. The decree-holder did not raise any objection, but the auction-purchasers appeared and claimed to have the sale confirmed. The Moonsiff on the same date confirmed the sale on the ground that the full amount recoverable under the decree together with costs and compensation had not been deposited as required by the section. On appeal the

District Judge held that no appeal lay against the order of the Moonsiff either under the Tenancy Act or the Code of Civil Procedure. The judgment-debtor obtained a rule from the High Court under section 622 of the Code of Civil Procedure, and also appealed against the order of the District Judge.

1891
 UGRAH LALL
 v.
 RADHA
 PERSHAD
 SINGH.

Moulvi *Mahomed Yusuf* appeared for the judgment-debtor.

Baboo *Saligram Singh* appeared for the auction-purchasers.

The judgment of the Court (PETHERAM, C.J., and AMEER ALI, J.) was delivered by

PETHERAM, C.J.—This matter comes before the Court on appeal from an order of the District Judge of Shahabad, and a rule to set aside the order of the Moonsiff, out of which that of the District Judge arose. The appeal to the District Judge was dismissed by him, on the ground that no appeal lay in the case. That question has not been argued before us, and the real question arises upon the rule.

A decree for rent was obtained by the landlord against the applicant, and the tenure was put up for sale in execution of the decree, and sold to the present respondent on 30th October 1889. On 25th November 1889 the applicant presented the following petition to the Moonsiff in whose Court the action had been brought:—

“Petition for reversal of auction sale for arrears of rent under section 174, Act VIII of 1885.

Present :

Purna Chunder Dey, Roy Bahadoor, Moonsiff at Buxar, District Shahabad.

No. 423 of 1889.

Maharajah Radha Pershad Singh Bahadoor (decree-holder) v.
 Ugrah Lall (judgment-debtor).

Hail Cherisher of the poor:—In execution of this decree, the whole of the gozashta land has been sold by public auction, but the sale has not been confirmed. Within 30 days your petitioner, his brother Rajpati Lall, nephew (brother's son) Ram Parsad Lall, Mohabeer Ram, son of Srigobind, Ramdainty Tailee, son of Bisram Tailee, and Sheo Churn Lall, son of Hanuman Doss, of

1891
 UGRAH LALL
 v.
 RADHA
 PERSHAD
 SINGH.

Bhojpurkadim, have sold some gozashta land, and brought the decretal money with compensation for the auction-purchaser at 5 per cent. The amount as per calculation be received, and the auction sale set aside.

UGRAH LALL, judgment-debtor, by my own pen.
The 25th November 1889."

And on the next day, November 26, the Moonsiff made this order :—
 "The judgment-debtor may deposit the amount if he likes." On the same day a *chalan* was prepared in the office of the Moonsiff, and was signed by his sheristadar, for the sum of Rs. 792-11-6, and was given to the applicant as showing the amount payable by him under section 174 of the Tenancy Act, and the officer in charge of the Treasury was directed to receive that amount, if it was paid before 3 o'clock on the 28th. The amount was in fact paid in by the applicant before that time, and was received by the officer. It was afterwards, and after the expiration of 30 days from the date of the sale, discovered that the calculation made in the office of the Moonsiff was incorrect, and that the amount which should have been paid by the applicant in respect of the matters mentioned in section 174, was two or three rupees more than the sum mentioned in the *chalan*, and the Moonsiff, holding that the provisions of the section had not been complied with, confirmed the sale. We think that in doing so he has taken an incorrect view of the law. Section 174 provides no machinery by which the amount payable under the section is to be ascertained, but apparently, from what has taken place in this case, the amount is in practice calculated in the office after notice to the decree-holder, and when that has been done, we think the amount so calculated and settled by the officer of the Court, has been settled as the amount payable under the section, and that when that amount has been paid into Court, an order to set aside the sale must be made by the Court as a matter of right. For these reasons, we think that the order of the Moonsiff confirming the sale, after the amount which had been found by the Court officer to be the amount payable had been paid, was without jurisdiction, and must be set aside, and an order to set aside the sale passed in its place. Appeal against order dismissed. No costs.

A. A. C.

Rule made absolute.